Ethics and Standards of Conduct

Professional Military Ethic

IG / SJA Relationship

Enabling Learning Objectives

Ethics

1. Describe the three principal sources of professional ethics in the U.S. Army.
2. Describe the seven essential values of the Army Ethic.
3. Understand the relationship of Professional Ethics, Principles of Ethics for Executive Branch Employees, and the Joint Ethics Regulation (JER).
4. Identify the command ethics counselor.

Enabling Learning Objectives
(continued)

Ethics

5. Explain the roles of the IG and the command ethics counselor.
6. Given a special situation, apply the standards-of-conduct principles concerning:
   a. Preferential treatment of individuals or groups.
   b. Use of frequent-flier miles or other travel benefits.
   c. Government resources for other than government business.
   d. Gift-giving among DoD employees or to DoD employees from contractors.
   e. Private commercial activities by members of the DoD or their family members.
   f. Military support to private organizations and fund-raising by private organizations.

Ethics

ELO

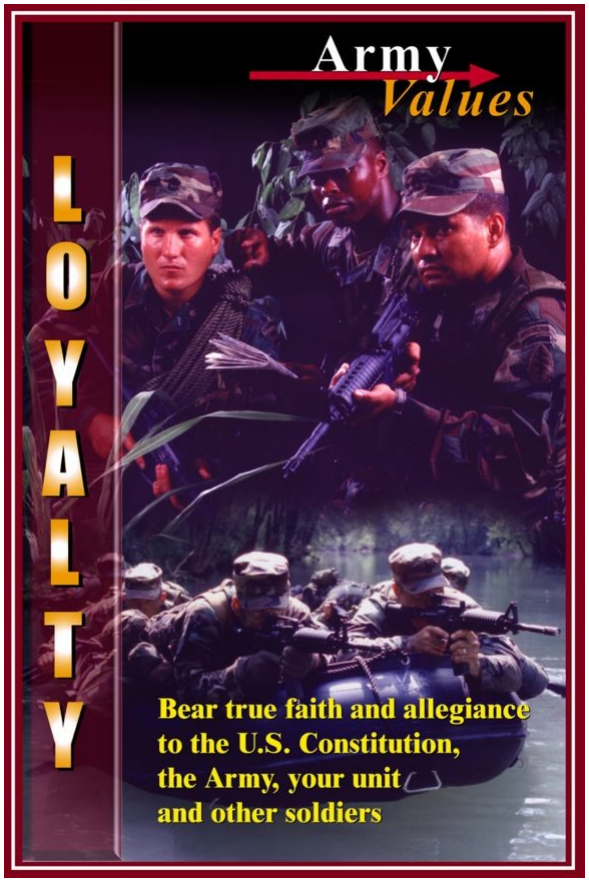
1. Describe the three principal sources of professional ethics in the U.S. Army.
   A. Beliefs
   B. Values
   C. Norms

Ethics

ELO

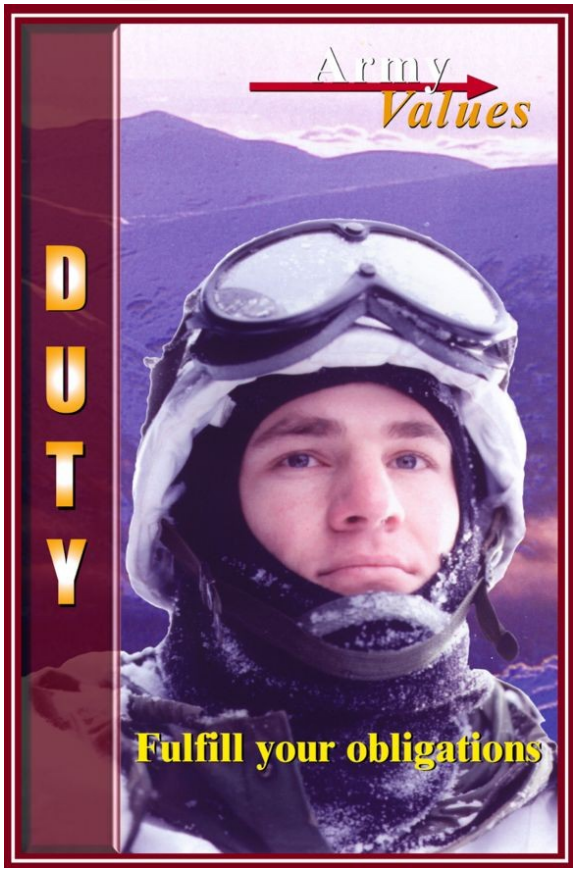
2. Describe the seven essential values of the Army Ethic.
   A. Loyalty
   B. Duty
   C. Respect
   D. Selfless Service
   E. Honor
   F. Integrity
   G. Personal Courage

Loyalty



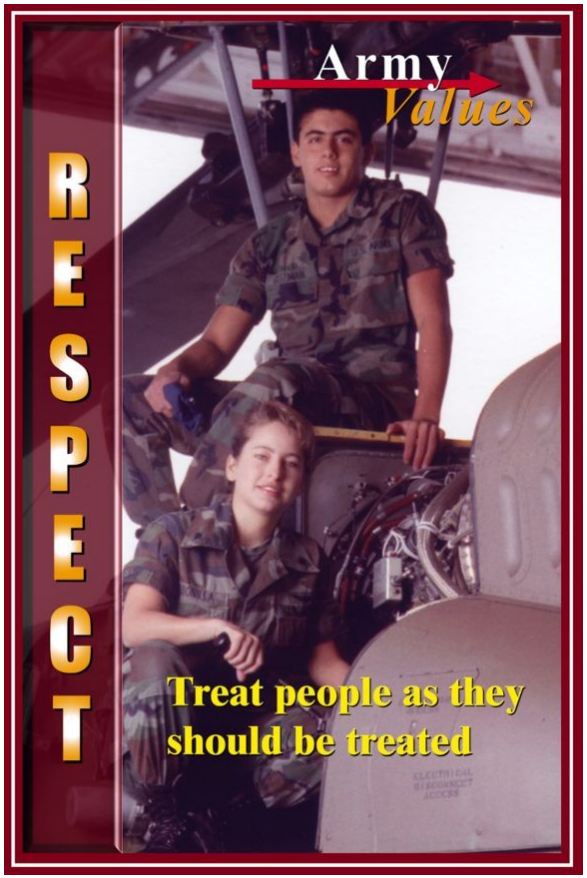
"Bear true faith and allegiance to the US Constitution, the Army, your unit, and other soldiers."

Duty



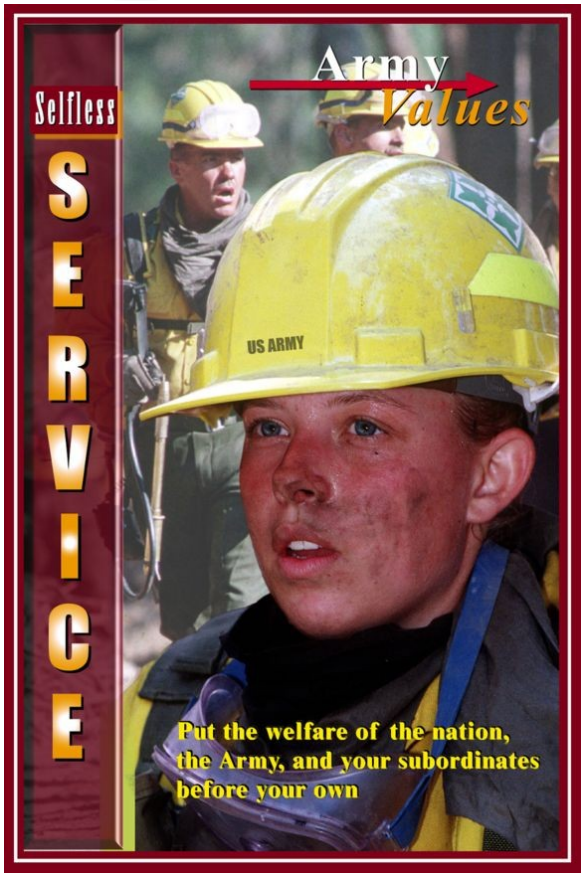
"Fulfill your obligations."

Respect



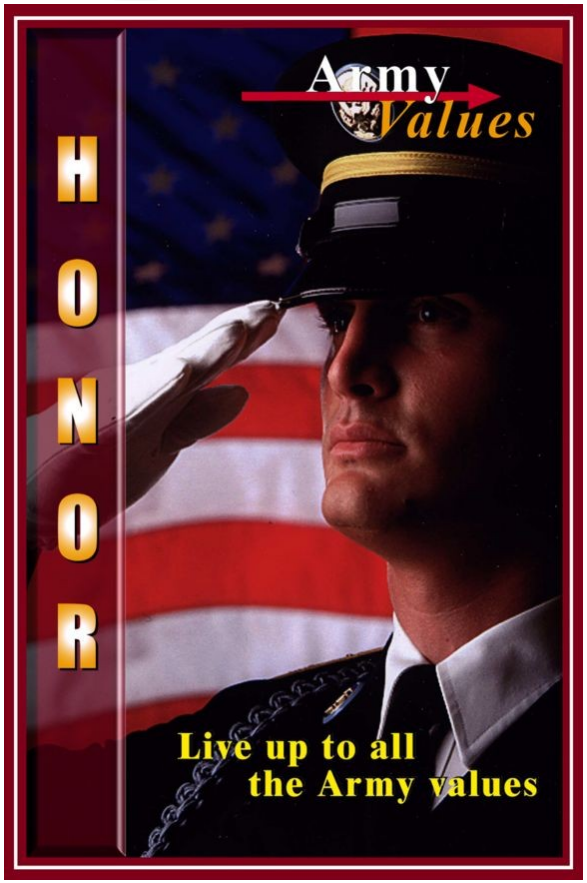
"Treat people as they should be treated."

Selfless Service



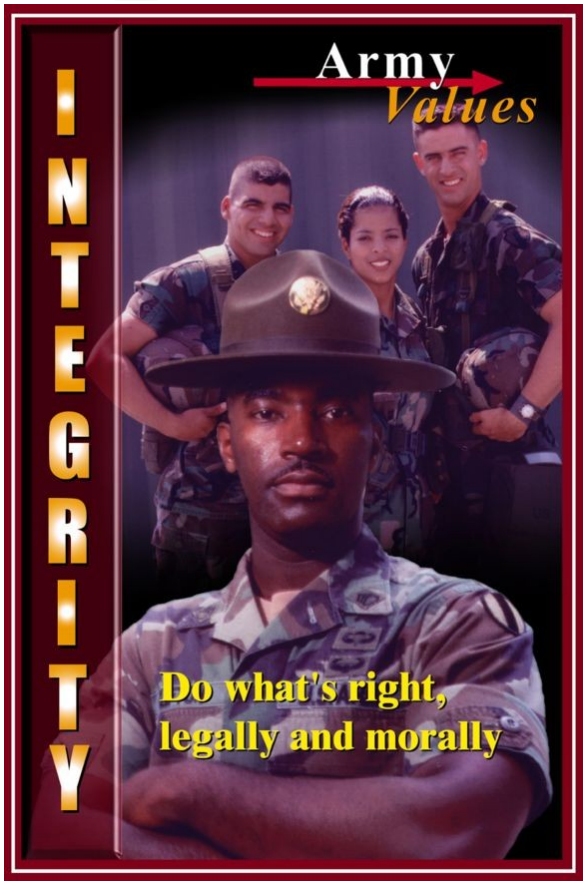
"Put the welfare of the nation, the Army, and subordinates before your own."

Honor



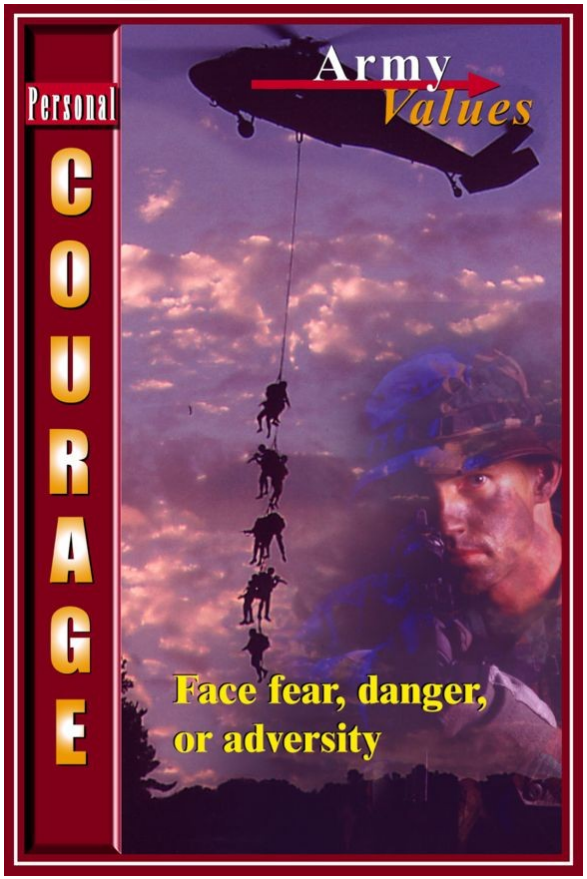
"Live up to all the Army values."

Integrity



"Do what's right – legally and morally."

Personal Courage



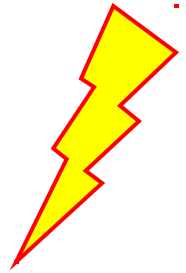
"Face fear, danger, or adversity (physical or moral)."

Ethics

ELO

3. Understand the relationship of Professional Ethics, Principles of Ethics for Executive Branch Employees, and the Joint Ethics Regulation (JER).

Ethics



4. Identify the command ethics counselor.
   A. 5 CFR Sec. 2638.201: Each agency shall have a designated agency ethics official.
   B. 5 CFR 2638.204: Deputy ethics official: A designated agency ethics official may, if necessary, delegate to one or more deputy ethics officials any of the duties …

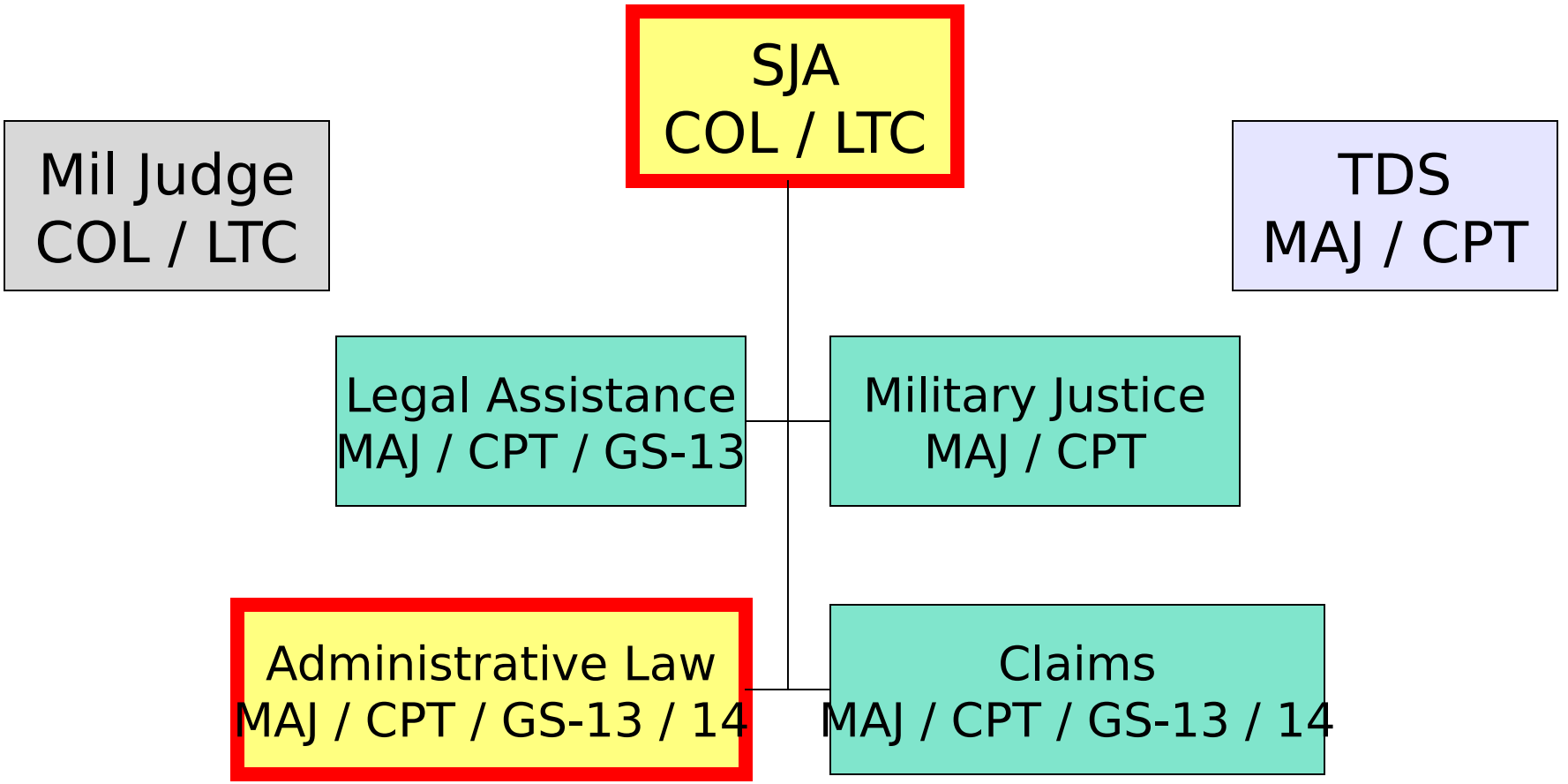
Command Ethics Advisor

- Army General Counsel (GC) – Designated Agency Ethics Official
- Memo from GC to The Judge Advocate General dated 5 September 2001 designates him as Deputy Designated Agency Ethics Official
- Memo from The Judge Advocate General (TJAG) to MACOM Staff Judge Advocate (SJA) and others dated 9 April 2002 designates them as ethics counselors

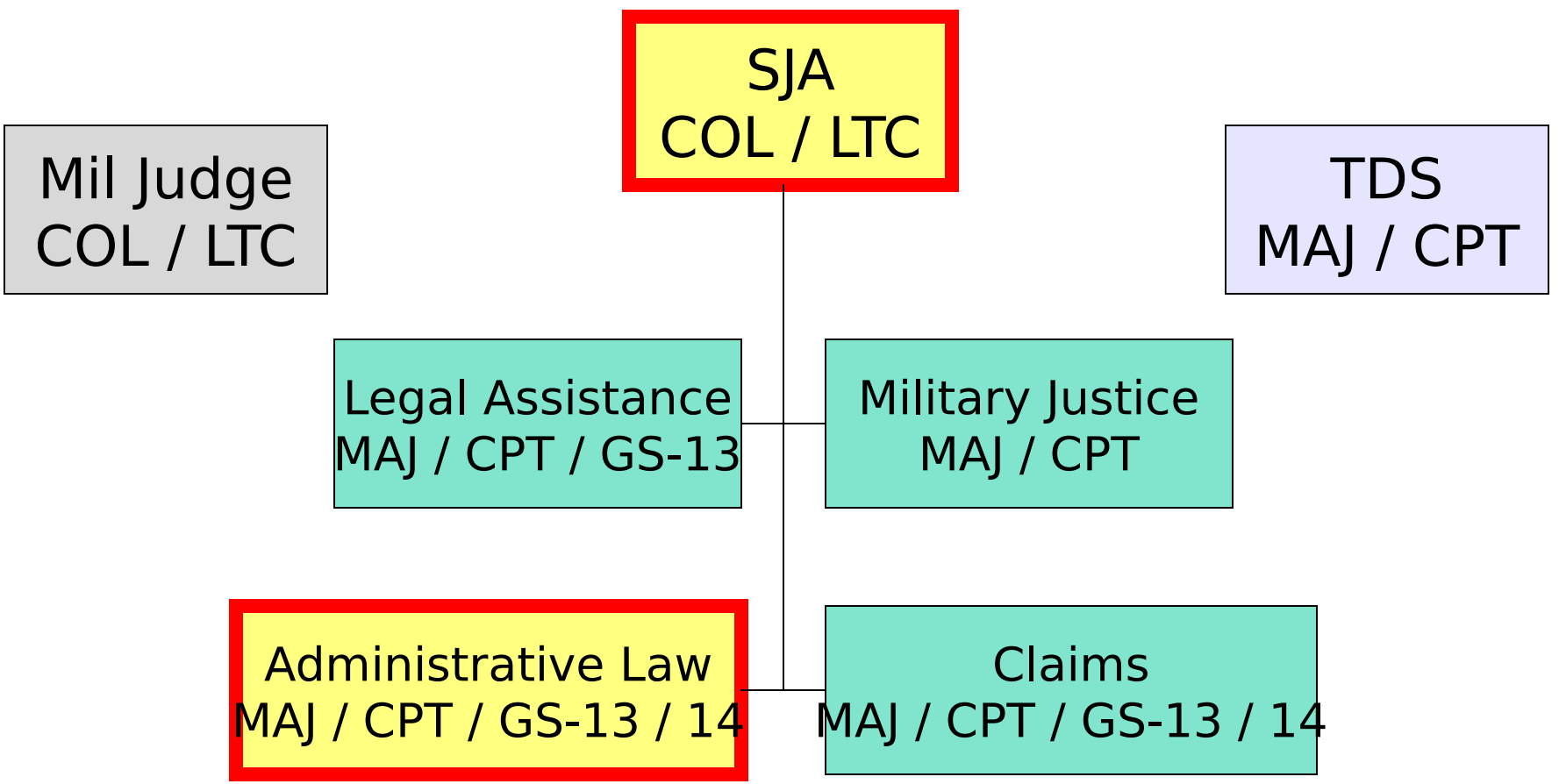
Command Ethics Advisor

- MACOM and Installation SJA's designate subordinate ethics counselors by memorandum
- All EC’s in the Army are attorneys

SJA Office Organization



SJA Office Organization



Ethics

ELO

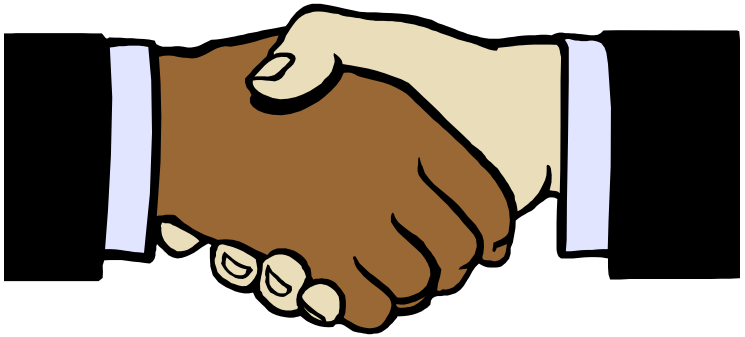
5. Explain the roles of the IG and the command ethics counselor.

IG / SJA Relationship

- ***IG relationship with SJAs?***
- **IG's "best friend"?**
- **Who is the IG's point of contact in the SJA office?**
  - **Who is Their Client?**
  - **Who is Your Lawyer?**

IG and SJA

- Forge a close, effective relationship
- Both members of the personal staff
- **Combined** advice very persuasive



How to Keep You and Your Boss Out of Trouble

1. **Tell people what the JER says – do not interpret it.**
2. **Refer people to the Command Ethics Counselor – the source of expertise (and immunity) on the JER.**
3. **Stay out of the approval / coordination chain.**
4. **Always try to do the right thing.**

Authorities

1. **Ethics in Government Act, 5 USC. App. §101 *et. seq*. & EO 12674 "Principles of Ethical Conduct for Government Officers and Employees"**
2. **OGE Standards of Conduct for Employees of the Executive Branch, 5 CFR §2635 *et. seq*.**
3. **Joint Ethics Regulation, DoDD 5500.7-R**
   - **A. Punitive regulation in parts**
   - **B. Makes many provisions applicable to enlisted members of Armed Forces**
   - **C. Applies to National Guard or Reserve when engaged in federal function or using federal authority, title, or position**

Authorities

(continued)

- 18 USC §§205, 207, 208: Criminal Statutes
- Procurement Integrity Act and Fiscal Law

Three Underlying Principles

- 1 - Use Government Resources only for Government Purposes
- 2 - Do Not Use Public Office for Private Gain
- 3 - Do Not Give Preferential Treatment to any Private Entity

"War must be carried on systematically, and to do it you must have men of character activated by principles of honor."
General George Washington

Ethics

ELO

5. Given a special situation, apply the standards-of-conduct principles concerning:

   a. Preferential treatment of individuals or groups.

   b. Use of frequent-flier miles or other travel benefits.

   c. Government resources for other than government business.

   d. Gift-giving among DoD employees or to DoD employees from contractors.

   e. Private commercial activities by members of the DoD or their family members.

   f. Military support to private organizations and fund-raising by private organizations.

Preferential treatment of individuals or groups

Preferential Treatment

RACE

RELIGION

GENDER

BACKGROUND

FRIENDSHIP

DUTY POSITION

APPEARANCE

PERSONAL ACTIVITIES

-- QUARTERS ASSIGNMENTS
-- QUARTERS UPGRADES / MAINTENANCE
-- OFFICE SPACE / LOCATION
-- PARKING
-- TRAVEL

"WHATEVER I'VE GOTTEN WAS BASED ON MERIT. WHAT THEY GOT WAS BECAUSE OF PREFERENTIAL TREATMENT."

Military support to private organizations and fund-raising by private organizations

Interaction with Non-Federal Entities

Especially Private Organizations

- ***No*** Endorsement or fundraising
- ***No*** Provision of Government Resources unless authorized by law or regulation
- ***No*** participation, management, or direction in official capacity

Military Support to Non-Federal Entities

- **LOGISTICAL SUPPORT:** (speakers, facilities, equipment) – community relations – no preferential treatment
- **NO ENDORSEMENT OF FUNDRAISING:** (except: CFC, AER, disaster appeals, groups of DoD employees, and dependents)
- **CO-SPONSORSHIP:** Conferences / seminars – Private Organization is a recognized scientific, technical, educational, or professional group

POs on the Installation

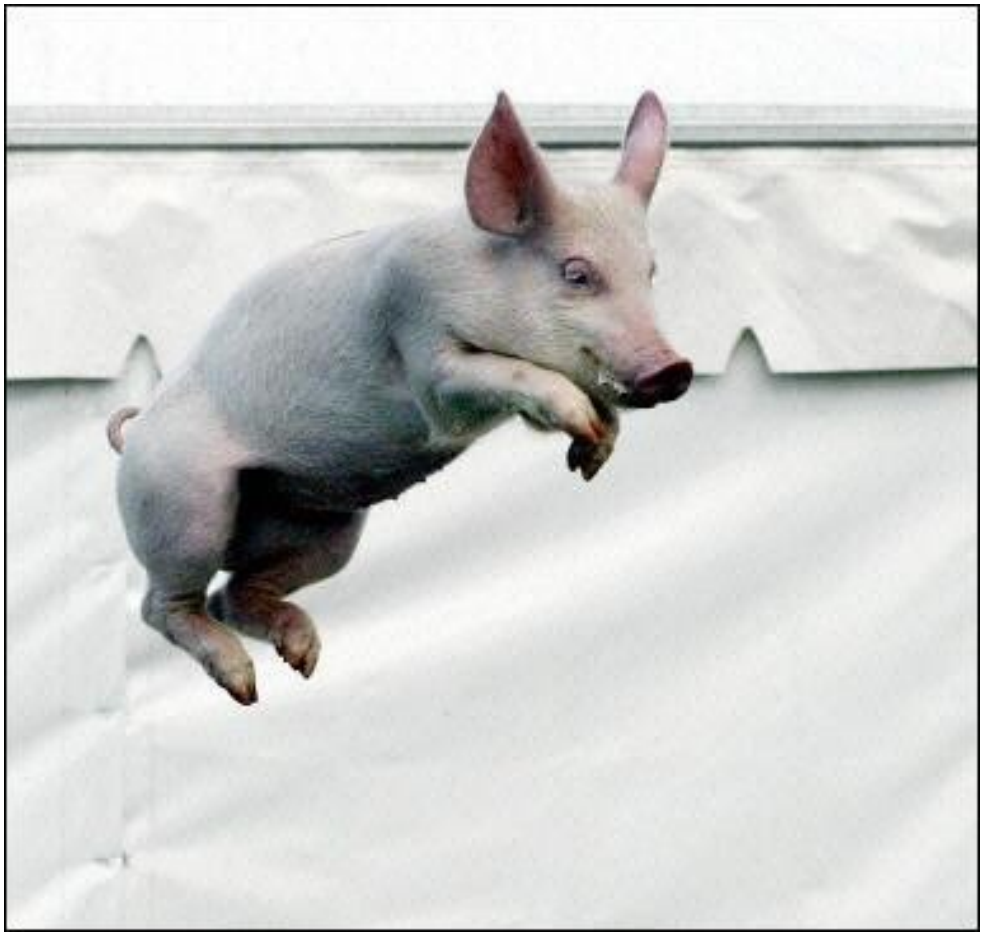
- New regulation: **AR 210-22** (dated 22 October 2001)
- No Army endorsement or preferential treatment
- No management by DoD personnel in an official capacity
- No use of title or position
- Self-sustaining (pays utilities, etc.)

"Special Status" POs

- National Military Associations
- Federally sanctioned
- Boy Scouts / Girl Scouts
- Have special status but limited special treatment; otherwise, just like any other Private Organization

Use of Frequent Flier Miles or Other Travel Benefits

Air Travel . . .



Frequent-Flier Miles

- **Changed by FY02 National Defense Authorization Act (NDAA)**
- **Frequent-flier miles (FFM) from official travel now personal property**
- **Must be obtained under same rules as for general public**
- **No additional cost to government**
- **Retroactive (acceptance – improper use not so!)**

Air Travel

- Government Policy
  - Travel **COACH**
  - By Commercial Air
- Rules on Business and First Class as Exceptions to Policy
- Military Air requires certain showings and has specified approval authorities depending on status

Air Travel

- Business-Class Travel
  - Approval Director of the Army Staff (DAS), 4-star MACOM Commanders, 3-star Deputy CG / Chief of Staff, and 3-star USARPAC Commander
  - Must include justification and recognition of cost difference
- First-Class Travel – Secretary of the Army is the only approval authority

Transportation Military Aircraft

- **Military aircraft (Mil Air) can only be used if the actual cost is less than the commercial cost**
- **Commercial aircraft must be used if available during a 24-hour period**
- **Mil Air may be used for clear and present danger, emergency, or operational necessity**

Spouse Travel

- Independently authorized ITOs under JFTR / JTR (Army policy not an expert on family policy)
- Spouse Accompanying Travel -- DAS or 4-star MACOM CG / 3-star USARPAC CG approval
- Unofficial Travel -- non-interference reimbursable -- reimburse at full commercial fare and normally limited to 4-star and higher

Still . . .

- Have to watch manipulation of travel to get FFM benefits, i.e. flying non-contract carriers
- And Army policy: if flying business or first class (either using FFMs or your own funds), you cannot fly in uniform and can display no public advertisement of rank or grade

Air Wars

(continued)

What **Can** you use?

- **<u>VIP Lounge Privileges</u> (based on frequent-flier status)**
- **<u>Upgrade coupons</u> (not based on Federal status or rank)**
- **<u>On-the-spot upgrades</u> (not based on rank)**
- **<u>Compensation</u> for loss or injury**

Bumps (in the Air)

Actually on the ground . . .

- **Not air pockets -- We're talking loss of seat**
- **Voluntary Bump -- You keep the benefits**
- **Involuntary Bump -- Government gets the swag**
- **Does this make sense?**
  - **Yes, because of a *KEY CONCEPT:* you are using personal time for a voluntary bump, and you are on the Government clock when it's involuntary.**

Private commercial activities by members of the DoD or their family members

Solicitations
The General Rule

"An employee shall not use or permit the use of his government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit."

5 CFR §2635.702(a)

Misuse of Government Position

Solicitation of Subordinates

- Employees may not use their public office for the private gain of themselves or another
- Selling or solicitation to / of subordinates is prohibited -- JER 5-409 and AR 600-20
- May not use to endorse commercial enterprise, product, or non-Federal entity --JER 3-305
- May not accept an honorary membership or office in any association or private organization based on position or assignment

Why?

MCPHERSON
© 1998 John McPherson/Dist. by Universal Press Syndicate
THEN AGAIN, IF YOU HAPPENED TO BUY, OH, LET'S SAY 36 BOXES OF GIRL SCOUT COOKIES FROM MY DAUGHTER, I MIGHT CONSIDER RAISING YOUR PERFORMANCE REVIEW FROM "UNSATISFACTORY" TO "SATISFACTORY."
www.uexpress.com
4-10

Government resources for other-than-government business

Use of Government Resources

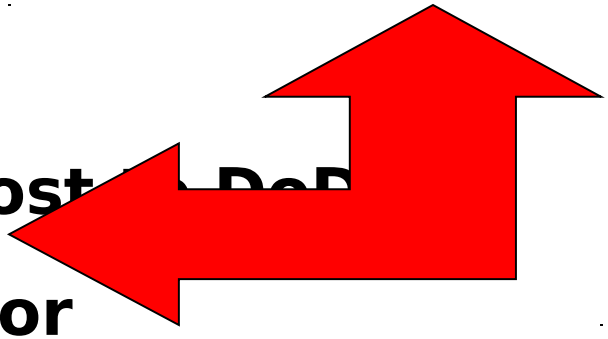
Employees shall protect and conserve Federal property and shall not use it for other than authorized purposes."

5 CFR 2635.101(b)(9)

I'M IN FOR BOMBINGS AND ARSON...
...THEY GOT ME FOR MAIL FRAUD...
...TAX EVASION...
DRUG DEALING...
...CALLING MY MOTHER LONG-DISTANCE FROM THE OFFICE...

Authorized Use of Government Resources

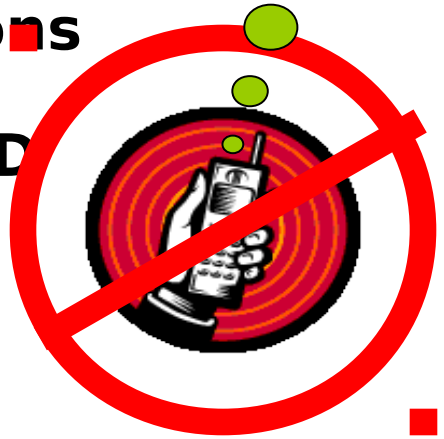
- Activity must not detract from performance of official duties or adversely reflect on DoD
- Activity must be REASONABLE in duration and frequency and serve legitimate public interest
- Only on personal time
- No significant additional cost to DoD
- Determination by Supervisor
- Certain assets may have specific regulations associated with them, i.e. real estate



Communication Systems

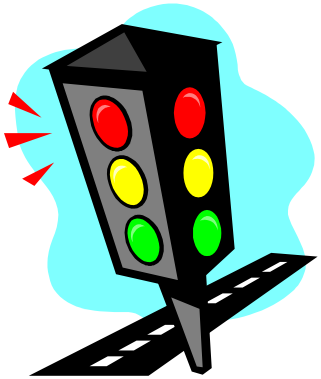
Limited personal communications may be authorized when --

- **No adverse impact on official duties**
- **Reasonable duration and frequency — whenever possible on personal time**
- **Does not adversely reflect on the Governme**
- **Does not overburden communications system**
- **No significant additional cost to DoD (no long-distance charges)**



Does not include cell phones!

Prohibited



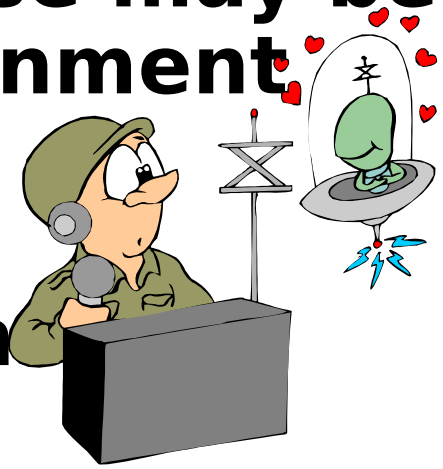
- Crimes (theft, porn, wire fraud)
- Commercial Activities
- Establishment of Religion
- Political Activities
- Interference with Mission
- Activity reflects adversely on DoD (EEO violations, extremist, or sexist activities)

OUR PROFITS WERE GOOD UNTIL A MANAGER ...
$
... USED HIS CREDIT CARD TO MAKE A 900 CALL FROM AN AIRPLANE PHONE.
© 1999 United Feature Syndicate, Inc.
HEY, I'M ALLOWED TO CALL MY WIFE WHEN I'M TRAVELING!

Privacy?? Nope!

Any official or personal use may be monitored by the Government

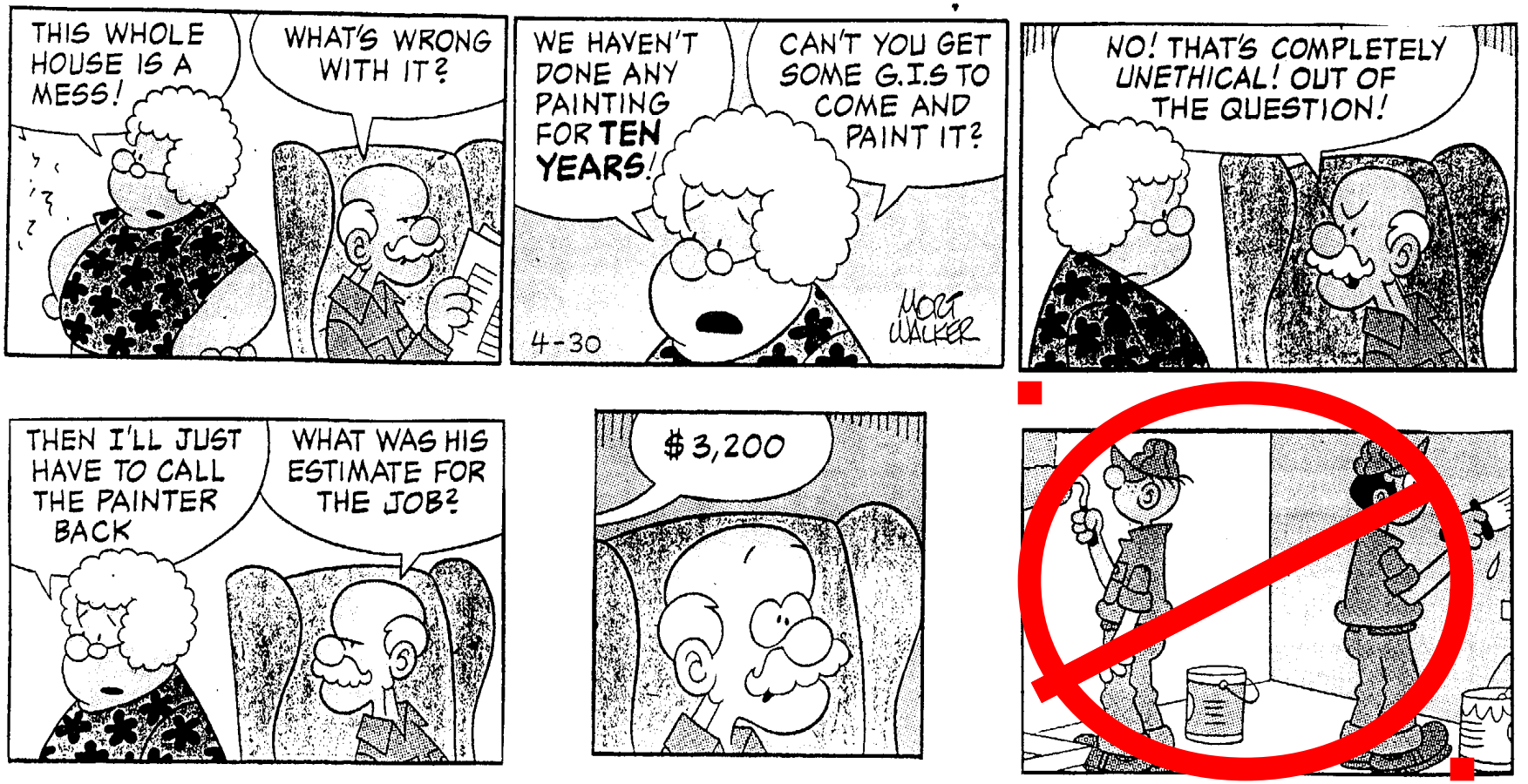
- **E-mail notes**
- **Internet searches**
- **Telephone conversation**



Practical Tip: Treat E-Mail the same as other written documents (Did you know that the public can get copies of E-Mail under FOIA?)

Government Time

- **Official time is dedicated to the conscientious performance of duties**
- **Union activities on official time are authorized by statute**
- **Official personnel matters may be handled on Government time**
- **Subordinates can never be ordered to work on personal or unofficial matters**


THIS WHOLE HOUSE IS A MESS!
WHAT'S WRONG WITH IT?
WE HAVEN'T DONE ANY PAINTING FOR TEN YEARS!
CAN'T YOU GET SOME G.I.S TO COME AND PAINT IT?
4-30
MORT WALKER
NO! THAT'S COMPLETELY UNETHICAL! OUT OF THE QUESTION!
THEN I'LL JUST HAVE TO CALL THE PAINTER BACK
WHAT WAS HIS ESTIMATE FOR THE JOB?
$3,200

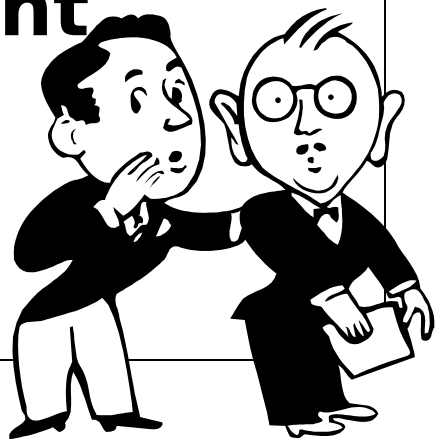
Problem Areas

- Use of secretaries and administrative assistants
- Use of enlisted and officer aides
  - See DoDD 1315.9 “Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers”
  - AR 614-200, para. 8-10: Enlisted aide duties must relate to the military and official duties of the GO [General Officer] and thereby serve a necessary military purpose. The propriety of duties is determined by the official purpose they serve rather than the nature of the duties.

Inside Information

Is information that is:

- **Not available to the general public**
- **Routinely exempt under FOIA**
- **Protected by Statute (Privacy Act)**
- **Trade Secrets / Procurement Sensitive**
- **Classified**



Transportation

Ethics (Your Sources of Authority / Standards)

- **DOD 4500.36-R, "Management, Acquisition and Use of Motor Vehicles" and DoDD 4500.36 (same title)**
- **DOD 4515.13-R, "DoD Policy on Use of Government Aircraft and Air Travel"; DoDD 4500.56, "DoD Policy on the Use of Government Aircraft and Air Travel"; DoDD 4500.9, "Transportation and Traffic Management"; DoDD 4500.43, "Operational Support Airlift (OSA)"**
- **AR 95-1, "Flight Regulations"**
- **AR 58-1, "Use of Motor Vehicles"**
- **Secretary of the Army Travel Policy**

Transportation NTVs

- Use of all DoD motor vehicles, including those leased using DoD funds or from other Government Agencies or commercial sources, shall be **restricted to official purposes only** . . .
- Official means: Essential to the successful completion of a DoD function, activity, or operation; and Consistent with the purpose for which the motor vehicle was acquired.
- Factually dependent decision.
- A matter of administrative **discretion** to be exercised within applicable laws and regulations.

Transportation Prohibited Uses

- **Unofficial or personal use of DoD transportation is not authorized**
- **Transportation to <u>private</u> social events**
- **Personal Errands**
- **Transport of Dependents / Visitors but see exceptions**
- **Transport to after-hours official functions without prior approval (when approved, must begin and end at the duty station)**

Transportation TDY

Government-owned vehicles may be used while on TDY to go:

- **To and from lodging**
- **Restaurants, PT, barber shop**
- **Religious services**
- **BUT NOT for entertainment**
- **Different services have different NTV rules**

Spouse Travel in NTVs

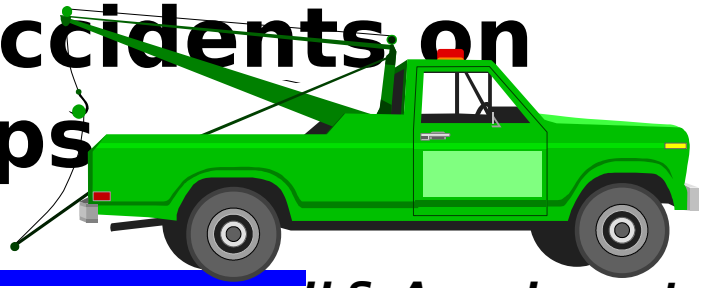
- Only when accompanying <u>their</u> sponsor, the use of the NTV already authorized to accomplish official business and space is available (ordering of additional or larger vehicles to take advantage of this provision is misuse).
- Limited exception for spouse of individual authorized domicile-to-duty transportation when proceeding independently to or from an official function, spouse's presence is in best interests of government, and circumstances make it impractical or impossible to accompany the sponsor

Beetle Bailey

I'M GOING SHOPPING TODAY AND I NEED JULIUS TO DRIVE ME
I CAN'T LET A SOLDIER DRIVE YOU ON PRIVATE BUSINESS
MORT WALKER
IF THE PRESS HEARD OF IT MY CAREER WOULD BE RUINED
11-2
©1986 by King Features Syndicate, Inc. World rights reserved
STOP AT THE HAIRDRESSER'S FIRST AND THEN TO THE MALL
US

Transportation Rental Vehicles

- **While on TDY, rental vehicles are not Government vehicles.**
- **You are only entitled to be reimbursed for official expenses.**
- **So BEWARE! You bear the risk of loss for accidents on personal trips**



Gift-giving among DoD employees or to DoD employees from contractors

Gifts

- **Gift from outside sources**
- **Foreign gifts**
- **Gifts from subordinates**
- **Structure of Rules**
  - **Broad Prohibition**
  - **Define out certain items**
  - **Exceptions**

Analysis of Gift Issues

From Outside Sources:

- **Is it a gift?**
- **From a prohibited source or because of official position?**
- **Does an exception apply?**
- **Should an exception be used?**

Is it a Gift?

Defined broadly -- Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, to include services as well as gifts of training, transportation, local travel, and lodging and meals.

Exclusions

But, not a Duck, because we say it is not a duck . . .

- Items with little intrinsic value intended solely for presentation (plaques, trophies, certificates, greeting cards)
- Coffee and donuts or other similar items (not a meal)
- Rewards and prizes open to the public
- Commercial discounts available to general public or all Government or all military personnel
- Anything paid for by Government or secured under Government contract or for which the employee pays fair market value
- Accepted with specific statutory authority

Gift Given By

- **Prohibited Source - person or entity**
  - **Who is seeking official action by the employee's agency**
  - **Does or seeks to do business with the employee's agency**
  - **Is regulated by the employee's agency**
  - **Has interests that may be substantially affected by the employee's official duties**
  - **or is an organization a majority of whose members fit into these categories**
- **Or given because of the employee's official position**

The test is whether the gift would have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his or her federal position.

Does An Exception Apply?

- **$20 or less ($50 per year)**
- **Gifts to a class (not based on rank)**
- **Awards and Honorary Degrees***
- **Discounts or similar benefits**
- **Social invitations (not prohibited source)**
- **Outside personal or business relationships**
- **Widely attended gathering***
- **Meals, refreshments, and entertainment in foreign areas**

Requires Ethics Counselor Opinion

Should an Exception Be Used?

- **NOT if the gift undermines the integrity of the Government. That is, if it is equivalent to bribery or creates that appearance**
- **NOT if it violates procurement integrity**
  (See FAR 3.104-4(f))
- **NOT if the frequency would undermine integrity**
- **You never have to accept a gift -- even if an exception applies**

Improper Gifts
What can one do??

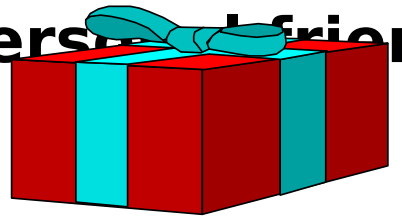
- **<u>Eat It!</u> Food may be shared in office**
- **<u>Return It.</u>**
- **<u>Pay for It</u>. Full market value.**
- **<u>Give It to Uncle.</u> Army and Morale, Welfare, and Recreation services (MWR) can accept certain gifts**

Foreign Gifts

- **Constitution, Art. 1, Sec. 9, Cl. 8: no foreign gifts without Congressional consent**
- **5 U.S.C. 7342 – what Congress allows – "minimal value"**
- **Gifts in excess of $285 (value in U.S.) can only be accepted on behalf of U.S.**
- **Your service has a GSA custodian for such gifts (Human Resources Command for Army)**
- **Meals and entertainment**
- **Travel originating and ending OCONUS**

Gifts From Subordinates

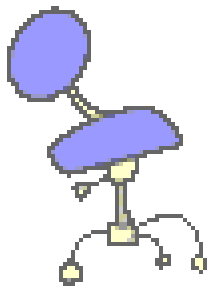
- **Rule: May not give gift to superior or accept from subordinate**
- **Exceptions**
  - **Unsolicited Occasional gifts (birthdays, holidays, etc.) limited to $10 in value**
  - **Food and refreshment consumed in office (potluck)**
  - **Personal hospitality at home and hostess gifts -- type and value customarily provided to personal friends**



Exception
Special Infrequent Occasions

- **Recognition of *infrequent* event of personal significance—birth or adoption of child, marriage, illness (not promotion)**
- **Upon occasion that terminates the official superior-subordinate relationship such as retirement or reassignment**
- **Limited to $300 per donating group, but one exception***
- **May solicit, may not suggest more than $10, but may accept more if offered**
- **If one person donates to more than one group, then values added together ("aggregated")**
- **Must be completely voluntary (suggest organizer be junior, and don't keep lists)**

***Departure gift may exceed $300 per donating group if gift is appropriate to the occasion and is uniquely linked to the departing employee's position or tour or duty and commemorates the same**



Practical Exercise

Why Lawyers Can Help

- Lincoln's Gettysburg Address has 226 words, the Ten Commandments have 296 words, the U.S. Department of Agriculture's order setting the price of cabbage has 15,269 words, and The Joint Ethics Regulation has 42,514 words ...
- "And God said: 'Let there be Satan, so people don't blame everything on me. And let there be lawyers, so people don't blame everything on Satan.'" -- George Burns

Enabling Learning Objectives

Ethics

1. Describe the three principal sources of professional ethics in the U.S. Army.
2. Describe the seven essential values of the Army Ethic.
3. Understand the relationship of Professional Ethics, Principles of Ethics for Executive Branch Employees, and the Joint Ethics Regulation (JER).
4. Identify the command ethics counselor.

Enabling Learning Objectives
(continued)

Ethics

5. Explain the roles of the IG and the command ethics counselor.
6. Given a special situation, apply the standards-of-conduct principles concerning:
   a. Preferential treatment of individuals or groups.
   b. Use of frequent-flier miles or other travel benefits.
   c. Government resources for other than government business.
   d. Gift-giving among DoD employees or to DoD employees from contractors.
   e. Private commercial activities by members of the DoD or their family members.
   f. Military support to private organizations and fund-raising by private organizations.

Quotations for the Road

Ethics

- " In victory you deserve champagne, in defeat you need it."
  Napoleon Bonaparte

- " I never give them hell; I just tell them the truth and they think it is hell."

  Harry Truman

CYA

Call Your Attorney!!